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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS

MEETING OF THE
OPERATIONS AND REGULATIONS COMMITTEE

Friday, October 31, 2008

3:31 p.m.

The Hilton Hotel
255 South West Temple
Salt Lake City, Utah

COMMITTEE MEMBERS PRESENT:

- Thomas R. Meites, Chairman (by telephone)
- Lillian R. BeVier, Acting Chairman
- Jonann C. Chiles
- David Hall
- Bernice Phillips-Jackson
- Frank B. Strickland, ex officio

OTHER BOARD MEMBERS PRESENT:

- Thomas Fuentes (by telephone)
- Michael D. McKay
- Sarah M. Singleton

1 STAFF AND PUBLIC PRESENT:

2 Helaine M. Barnett, President

Victor M. Fortuno, Vice President for Legal Affairs,
3 General Counsel, and Corporate Secretary

4 Patricia D. Batie, Manager of Board Operations

Mattie Cohan, Senior Assistant General Counsel,
5 Office of Legal Affairs

John Constance, Director, Government Relations and
6 Public Affairs Office

Tom Coogan, Assistant IG for Investigations

7 Karen M. Dozier, Executive Assistant to the President

Joel Gallay, Special Counsel to the Inspector General,
8 Office of the Inspector General

Matthew Glover, Assistant Counsel, Office of the
9 Inspector General

Charles Greenfield, Executive Director, Legal Aid
10 Society of Hawaii

Deborah Hankinson, Chairman, Standing Committee on
11 Legal Aid & Indigent Defendants (SCLAID), American
Bar Association

12 Charles Jeffress, Chief Administrative Officer

Ronald "Dutch" Merryman, Assistant IG for Audits

13 Anne Milne, Executive Director, Utah Legal Services

Linda Perle, Center for Law & Social Policy (CLASP)

14 Don Saunders, National Legal Aid and Defenders
Association (NLADA)

15 Karen J. Sarjeant, Vice President for Programs and
Compliance

16 Jeffrey E. Schanz, Inspector General

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1 P R O C E E D I N G S

2 (3:31 p.m.)

3 ACTING CHAIRMAN BeVIER: This is Lillian
4 BeVier. I am in place of -- I mean, because Tom Meites
5 is not able to be with us -- he's with us by phone --
6 this is the meeting of the Operations and Regulations
7 Committee.

8 And the first item on our agenda is to approve
9 the agenda. Is there a motion to approve the agenda?

10 M O T I O N

11 MR. HALL: So moved.

12 ACTING CHAIRMAN BeVIER: Second?

13 MS. CHILES: Second.

14 ACTING CHAIRMAN BeVIER: All in favor?

15 (A chorus of ayes.)

16 ACTING CHAIRMAN BeVIER: All opposed?

17 (No response.)

18 ACTING CHAIRMAN BeVIER: No nays. We're ready
19 to go.

20 Approval of the minutes of the committee's
21 meeting of August 1, 2008. Is there a motion to
22 approve the minutes?

1 M O T I O N

2 MR. MEITES: So moved.

3 ACTING CHAIRMAN BeVIER: Second?

4 MR. HALL: Second.

5 ACTING CHAIRMAN BeVIER: All in favor?

6 (A chorus of ayes.)

7 ACTING CHAIRMAN BeVIER: Thank you.

8 Next we have to consider and act on

9 alternative sanctions rulemaking. And we have in front
10 of us Mattie Condray (sic) to give us a staff report.

11 Mattie, welcome.

12 MS. COHAN: Thank you. For the record, I'm
13 Mattie Cohan, senior assistant general counsel for the
14 Legal Services Corporation.

15 ACTING CHAIRMAN BeVIER: I apologize, Mattie.

16 MS. COHAN: That's all right. I haven't done
17 it in a while, but every now and then I still do it.

18 ACTING CHAIRMAN BeVIER: Right.

19 MS. COHAN: The committee has in front of a
20 draft notice of proposed rulemaking that had been
21 previously provided to the committee. And the
22 committee has asked for different information and

1 presentations over the last series of meetings,
2 including the last meeting.

3 The staff report you have in front of you
4 responds to two of the three information requests that
5 the committee had. The third one on governing body
6 role and responsibility in grantee oversight is
7 something I understand that will be taken up at the
8 January meeting.

9 The draft notice of proposed rulemaking, as I
10 said, was provided to the committee earlier this year.
11 And management is recommending that the committee
12 recommend to the full board that the board publish the
13 notice for comment in the Federal Register.

14 I kind of want to make clear, kind of as a
15 procedural matter, that this is a draft -- that what's
16 in front of you is a draft. And if we publish it, we
17 would be publishing it for comment for 60 days. We're
18 not asking the committee or the board to adopt any
19 final rules at this point, rather just to kind of move
20 the process forward.

21 The board initiated the rulemaking some time
22 ago. We had that rulemaking workshop at which we got

1 some general -- you know, a variety of comments from
2 folks in the field. We've received some written
3 comments from the Standing Committee on Legal Aid and
4 Indigent Defendants of the American Bar Association,
5 and management believes that now is the time to move
6 forward and at least publish this notice for comment.

7 By publishing it in the Federal Register, it
8 becomes -- it's the next step in the process. But it
9 makes the process more fully public. You publish
10 something in the Federal Register and then everyone is
11 legally deemed on notice, and anybody who would care to
12 comment on the specific proposals would have plenty of
13 time to do so.

14 You know, in addition to getting obviously the
15 comments that we would expect from within the legal
16 services community, there would be that public notice
17 and opportunity if there were anyone else out there who
18 had an interest in who wanted to come, or would at
19 least be put on notice if they chose not to comment,
20 then they would have that choice.

21 MR. MEITES: Mattie? Hold it a second. Is it
22 our usual procedure to publish a draft, as you're

1 suggesting?

2 MS. COHAN: Well, it's not publishing the
3 draft. What it is is you publish a notice of proposed
4 rulemaking. It's a draft just because you haven't
5 approved it yet. If you approve it for publication,
6 either as is or with any changes, then whatever was
7 approved is what would be proposed for comment.

8 And then once comments come in, management
9 would obviously review the comments and make whatever
10 recommendations management felt was appropriate at that
11 time, whether that's to adopt --

12 MR. MEITES: My question is: Is this the
13 usual next step that we take in our rulemaking?

14 MS. COHAN: Yes. We are required -- if we're
15 going issue -- if we're going to have -- well, once you
16 do a rulemaking, you usually then publish a notice for
17 comment and then proceed to a final rule. The LSC Act
18 requires that before LSC adopt any rule changes, that
19 you go through a notice and comment period, as does the
20 LSC rulemaking protocol.

21 ACTING CHAIRMAN BeVIER: Mattie, what if we
22 decided to change the rule between the notice of

1 proposed rulemaking and the adoption of a final rule,
2 we decided to tweak it in particular ways. Would we
3 have to publish another NPRM?

4 MS. COHAN: Not necessarily. The concept is
5 what's within the scope of the rulemaking. If the
6 changes that are being considered are within the scope
7 of the rulemaking, then you can go ahead and -- what's
8 adopted does not have to look like what was proposed.

9 If there was a real radical departure from
10 what was originally proposed, then we could have to go
11 for additional comment, or you might want to go for
12 additional comment. And there would be nothing
13 stopping LSC from publishing, you know, what typically
14 is then, in the biz, referred to as a supplemental
15 notice of proposed rulemaking.

16 You know, if after the proposal comes out, if
17 management recommended or the board wanted something
18 that we just hadn't thought of, you know, and it's
19 like, hmm, let's think about this some more, let's get
20 some more comment, we're certainly -- the Corporation
21 can do that.

22 ACTING CHAIRMAN BeVIER: Okay. So we would be

1 free to tweak it, but just not to revise it or make
2 important changes?

3 MS. COHAN: Right. I mean, if -- right now
4 the notice of proposed rulemaking talks about changes
5 to the suspension rule and the adoption of lesser
6 sanctions, which is below 5 percent.

7 ACTING CHAIRMAN BeVIER: Right.

8 MS. COHAN: I think if the committee or the
9 board at the next step wanted to change what counts
10 as -- where that cutoff is between, say, a lesser
11 sanction, a lesser numerical sanction, and a
12 termination where the current cutoff is 5 percent, if
13 the board wanted to make it 50 percent, that might be
14 something that you'd want to go -- you'd need to go
15 back out for comment on.

16 ACTING CHAIRMAN BeVIER: I think so. All
17 right.

18 MS. COHAN: Yes. But that's within -- there's
19 a certain judgment call of what's in the scope of the
20 rulemaking, and you'd end up looking at it by
21 specifics.

22 But a lot of things are within the scope of

1 the rulemaking. And so if, you know, we propose that
2 the termination number -- you know, what's considered a
3 termination is 5 percent or above and that's what we
4 propose, and looking at it later if the committee
5 wanted to have that cutoff point be 3 percent, that's
6 probably not something you need to go back out for
7 comment for.

8 ACTING CHAIRMAN BeVIER: I understand. Thank
9 you.

10 MS. COHAN: Thank you.

11 ACTING CHAIRMAN BeVIER: Are you finished or
12 did we -- we've started questioning you, but we didn't
13 give you a chance to --

14 MS. COHAN: No. I was just trying to put the
15 next step of what management's recommendation was into
16 the context so you understand why we're asking -- why
17 management is asking what it's asking.

18 ACTING CHAIRMAN BeVIER: Thank you.

19 Are there questions from members of the
20 committee?

21 MS. PHILLIPS-JACKSON: So we're just --
22 Mattie, we're just posting?

1 MR. MEITES: Are we talking about the
2 substance of the staff report?

3 ACTING CHAIRMAN BeVIER: I think that your
4 mike is not on.

5 MS. COHAN: Yes. What management is
6 recommending is that the committee recommend to the
7 board that the board publish the notice of proposed
8 rulemaking for comment in the Federal Register.

9 As it's currently drafted, it's a 60-day
10 comment period. We're required by statute to provide a
11 30-day comment period unless there's a real emergency.
12 But given the significant nature of this proposal,
13 management deems that a longer comment period is
14 actually more appropriate, so that's why there's a
15 60-day comment period.

16 From a scheduling standpoint, if the notice is
17 published early November, comments would be due some
18 time early January. I don't think management
19 anticipates having all of the comments analyzed and
20 finalized in terms of management's next recommendation.
21 I don't think there's an expectation that we would have
22 a draft final rule or a recommendation of what to do

1 next at the January meeting, but rather at the April
2 meeting.

3 MS. PHILLIPS-JACKSON: So what happens after
4 the public gives its comments?

5 MS. COHAN: Then staff and management read all
6 of the comments -- they would be obviously provided to
7 the board -- and would develop a recommendation of what
8 to do next. The recommendation could be a draft of a
9 final rule that would then be presented to the
10 committee for its review and comment and recommendation
11 to the board.

12 And that final rule could be -- what we
13 proposed could be something different if the comments
14 said to us, you know, there's a better way, and we
15 agreed. Management could -- depending on what the
16 comments said, you know, if everybody thought better of
17 the whole thing and just decided to say, at this point
18 we recommend withdrawing the whole rulemaking -- you
19 know, there's a range.

20 Whatever that range of things that management
21 could propose, then that would come back as a proposal
22 for the committee's consideration. And the committee

1 could agree or disagree with management, as it will,
2 and make a recommendation to --

3 MS. PHILLIPS-JACKSON: So what happens if we
4 don't vote for this to go to public comment?

5 MS. COHAN: Then, more or less, the process
6 stalls where it is. The current -- if the publication
7 is not -- if there's no publication of a rule, the
8 current rules that are in existence continue as they
9 are.

10 You know, at that point the committee -- if
11 the committee does not want to move forward at all,
12 ever, with the publication of a notice, then the
13 committee might recommend to the board actually closing
14 the rulemaking because there is technically an open
15 rulemaking going on. But that's procedural.

16 MR. MEITES: Lillian?

17 ACTING CHAIRMAN BeVIER: Yes, Tom?

18 MR. MEITES: Let me tell you my thoughts on
19 reading the staff report, which I found very, very,
20 very helpful, that I think we have part of the issue
21 here but not the other part.

22 What seems to me is missing, and that's not

1 because the staff didn't put it in but because we
2 didn't ask them to, is that what do we expect our
3 grantees' boards to do when they face these
4 alternatives? I think that a problem we've seen in
5 some of the problems that have been encountered during
6 our tenure is that the board doesn't really seem to
7 know that the board's program is in trouble.

8 Boards are, by and large, a bunch of lawyers
9 from the place where the program is. They're not a
10 whole lot different than we are. I was on the board of
11 our grantee in Chicago.

12 If I had known or been told that any of this
13 was going on, I am confident that the board I was on,
14 and I'm sure the others boards that we have, would
15 immediately have moved into high gear, and whatever was
16 going on between the grantee's staff and our staff
17 would have been immediately overseen and, I believe,
18 capably resolved by the board.

19 We have scheduled for our January meeting a
20 review of the responsibilities we place on our
21 grantees' boards. And what I would like to hear and
22 see and think about is not whether these sanctions are

1 needed or not needed, or effective or not needed, in a
2 vacuum. What I'd like to see is what our staff has
3 found and what perhaps some of the board members of our
4 grantees have experienced when there is a problem in
5 the program.

6 I don't have strong views about publishing
7 this or not. In fact, it may be helpful to publish it
8 so that when we have our January meeting, there's at
9 least a framework for discussion.

10 But I think it's important that when we meet
11 in January, and the part that Mattie said we have
12 deferred, correctly, that we get a sense from the staff
13 and from some witnesses who are members of our
14 grantees' boards of what they find is effective and not
15 effective, and what they think their responsibilities
16 are, and how they think they would respond to these
17 sanctions.

18 So I think I support the publication of this.
19 But as long as the time frame is such that before any
20 further formal action is taken other than publication,
21 we have our January board meeting and we are free to
22 make changes or even backtrack on this step.

1 ACTING CHAIRMAN BeVIER: Are there comments
2 about what Tom has suggested? That sounds to me like a
3 very good idea.

4 I have a question about the timing, Mattie,
5 and I also have a question about a specific provision
6 in the proposed rule. Timing: It seems to me that we
7 have been talking about alternative sanctions for
8 several years. And the idea of having a 60-day comment
9 period and then not being in a position to move forward
10 or to stop in January just seems to me to admit of
11 total defeat with respect to moving this process
12 forward or bringing it to a conclusion.

13 So can you help me to -- can you tell me
14 whether it would be possible to have a 45-day comment
15 period and then have staff be in a position to report
16 to the board in January, so that at least we'd be in a
17 position to take another step?

18 I completely agree with Tom that we need to
19 know more about how the grantees' boards -- what
20 responsibilities they have and should have and how they
21 react. So would a 45-day period be workable in terms
22 of the staff's ability then to accommodate and present

1 to us in January?

2 MS. COHAN: Well, it would certainly be easy
3 to do that for the January meeting than 45-day. I can
4 speak to myself. I can't speak to everybody else on
5 the staff level who has to be involved in this. If the
6 notice was published for a 45-day comment period at
7 early November, it means the comments are going to be
8 due mid-December, at which point you're hitting up
9 against -- I mean, just as a practical matter, you're
10 hitting up against the holiday season.

11 ACTING CHAIRMAN BeVIER: Sure. But that's
12 over.

13 MS. COHAN: Now, I'm not really taking any
14 time off.

15 ACTING CHAIRMAN BeVIER: Right.

16 MS. COHAN: I'm not going anywhere. I will
17 have plenty of time to sit and read them, read the
18 comments and work on them. But I know I'm not, you
19 know -- I'm perhaps an anomaly that I like working
20 between Christmas and New Year's, that week. A lot of
21 people like to take that off, and I actually like to go
22 in because I get a lot of work done.

1 And I'm trying to flip through while I'm
2 sitting here to figure out when the -- the January
3 meeting in 2009 is at the end of the month.

4 ACTING CHAIRMAN BeVIER: Yes.

5 MS. COHAN: So that would be helpful. But I
6 think I would then -- I think from a -- I can tell you
7 what my timing is, but I would feel the need to defer
8 to Helaine and the rest of the executive team about,
9 you know, their timing, whether they would be
10 comfortable with that.

11 The other thing, before letting them jump in,
12 is to the extent if Tom did not -- if I understood what
13 Tom's comments were was that he would want to consider
14 anything in the context of the discussion that is
15 planning on happening in January, it might in fact then
16 be better not to have a draft of a final rule prepared
17 for the -- you know, to plan on having that in April
18 inasmuch as -- get the notice out. Get comments back.
19 there would be obviously some time to digest the
20 comments even if a final decision wasn't being made.
21 But you have a great -- you know, kind of a greater
22 knowledge base.

1 Then at the January meeting, you have this
2 additional discussion which might well inform what
3 management's ultimate recommendation is with respect to
4 this particular rulemaking.

5 So although -- you know, they're not
6 unrelated, but they're not necessarily related, the two
7 discussions. So I think if we plan on having a draft
8 final rule or a more finalized recommendation for the
9 April meeting, it builds in the time to have the
10 discussion in January that's not happening here on that
11 one last piece.

12 But obviously that's, you know, whatever the
13 committee's pleasure.

14 ACTING CHAIRMAN BeVIER: Sure. I understand
15 that. I wonder if it's possible to have it be a
16 shorter comment period and then to plan not necessarily
17 on having the final rule before us, although as I
18 suggest, I'm rather thinking that I would really like
19 to be in a position sooner rather than later to either
20 fish or cut bait here. But I don't want to do it when
21 we haven't got the information.

22 But at the very least, have staff have

1 digested the comments with respect to this proposed
2 rule. And, I mean, is it possible to schedule and tell
3 you, if management feels like it's in a position to
4 final rule, they would; if not and they need extra time
5 and they think the board needs extra time to
6 accommodate the grantees' position, then that would be
7 the case? But just to build in some flexibility about
8 what we expect to happen between now and the next board
9 meeting, and what we expect to happen at the next board
10 meeting? Is that a possibility?

11 MS. COHAN: Oh, sure. It's fine with me. And
12 unless somebody else in management wants to speak up
13 and nay-say me --

14 MS. PHILLIPS-JACKSON: Can I just jump in
15 here? What disadvantage does that have to the public
16 if we give them 45 days to comment? What is the
17 disadvantage?

18 MS. COHAN: Well, the disadvantage is only
19 inasmuch as then, you know, there's 15 fewer days in
20 which to organize oneself. And given that we're moving
21 into November, you know, the holiday season seems to
22 start a little earlier every year.

1 And it just -- if you have an organization
2 where a number of people -- say the grantee needs to
3 get its board together to comment, to give those board
4 members sufficient time to digest the rulemaking and
5 for them to meet and come up with whatever their
6 comments are.

7 You know, 45 days, 60 days, I think a lot of
8 these issues have been out there. This draft notice
9 has actually been out there for a while. Certainly for
10 anyone in the legal services community who's been
11 attending our meetings and watching our website, none
12 of this is going to be news to them.

13 MS. PHILLIPS-JACKSON: I just don't want the
14 public to be shorthanded because of the 45 days. If
15 someone needs to say something and they only have
16 45 days and then they miss out because they only have
17 45 days -- I just want us to be fair across the board.

18 MS. SARJEANT: Karen Sarjeant. I just want to
19 say that I'm concerned about shortening the time period
20 for comment if this rule is published. I think this is
21 a very significant issue for our programs. And the
22 fact that it's been out there and there hasn't -- you

1 know, we haven't gotten a lot of feedback yet -- we've
2 gotten some.

3 But I really think that we need to -- the fact
4 that we've had it on the table for over a year now, for
5 us to take the position that all of a sudden we're only
6 going to give 60 days to give thoughtful comment, and
7 it happens to be a 60-day period in which there are
8 many things that are happening in the community,
9 whether it's the annual conference for NLADA or it's
10 all the reporting requirements that come with our
11 grantees at the end of the year, and all of the other
12 things they have to do.

13 So I would hope that the committee would
14 consider giving sufficient time to this. And I
15 actually do think that the conversation that's going to
16 happen in January around the role of the boards -- and
17 I'm not going to go into a whole big discussion about
18 that now. But I think the role of the boards is very
19 significant on these issues of oversight of programs
20 and governance, and that that does need to be a part of
21 this discussion.

22 So I would encourage that we not rush at this

1 point, but take the time to have that discussion and
2 get full comment from the field when there's time to do
3 it in a thoughtful way.

4 ACTING CHAIRMAN BeVIER: Karen, are you
5 suggesting that 60 days is too short?

6 MS. SARJEANT: I actually think that this is a
7 difficult 60-day period to publish. And I have no idea
8 if this is possible. But I'm not sure why, if we were
9 going to do 60 days and we -- our thinking is that for
10 the feedback we get back in terms of comments, we
11 wouldn't be ready to discuss it at the January meeting,
12 I'm not sure why we wouldn't just then do, say, a
13 90-day comment period and then get the comments, you
14 know, have our January meeting, talk about the comments
15 in staff, and present something for the April meeting.

16 ACTING CHAIRMAN BeVIER: So we wouldn't have
17 comments by January?

18 MS. SARJEANT: No.

19 ACTING CHAIRMAN BeVIER: So we would just
20 have -- it's another three-month comment period. You
21 think that's necessary? Mattie was recommending 60
22 days. You think it should be 90?

1 MS. SARJEANT: Well, I just -- I'm just saying
2 that in terms of what 60 days gets us, it won't allow
3 the board to have -- my understanding when we discussed
4 this before was that if we used the 60-day comment
5 period and it got posted in the next week or so, we
6 weren't going to have those comments considered and the
7 staff work done in time for the January meeting.

8 So I'm not sure that there's a rush to have a
9 60-day comment period as opposed to a 90-day comment
10 period. It's out there. I would still allow people to
11 comment after the board meeting.

12 MS. COHAN: Yes. The main difference is a
13 60-day comment period, the comments themselves would be
14 in. But as Karen said, the feeling was that all of the
15 staff work that management would want to do with the
16 comments would probably not be completed in time to
17 then have a draft final rule for the January meeting.

18 ACTING CHAIRMAN BeVIER: So does management --

19 MS. COHAN: If you went with a 90-day comment
20 period, the comment period would very likely not have
21 closed by the time of the January meeting. It would
22 probably close very shortly thereafter.

1 ACTING CHAIRMAN BeVIER: So do you have a
2 recommendation from management? Is it a recommendation
3 for 60 days or a recommendation for 90 days?

4 MS. SARJEANT: I'm going to speak on behalf of
5 management. And I'd make the recommendation for
6 90 days and allow programs to have the time to fully
7 comment, have us consider it, and get you a thoughtful
8 compilation of that, including the discussion that's
9 going to be held about board governance
10 responsibilities.

11 MR. MEITES: Lillian, this is Tom.

12 ACTING CHAIRMAN BeVIER: Yes, Tom?

13 MR. MEITES: That has the additional advantage
14 of letting perhaps some of our witnesses at the January
15 board meeting file comments after the meeting.

16 MS. SARJEANT: Right.

17 ACTING CHAIRMAN BeVIER: Okay. What is the
18 pleasure of the committee? Do I have a motion to
19 publish this NPRM with management's now recommendation
20 of 90 days?

21 M O T I O N

22 MR. MEITES: I so move.

1 ACTING CHAIRMAN BeVIER: Tom.

2 MR. HALL: Second.

3 ACTING CHAIRMAN BeVIER: David seconds. All
4 in favor?

5 (A chorus of ayes.)

6 ACTING CHAIRMAN BeVIER: All opposed?

7 (No response.)

8 ACTING CHAIRMAN BeVIER: The motion carries.

9 Thank you very much, Mattie.

10 MS. COHAN: Thank you.

11 ACTING CHAIRMAN BeVIER: Oops, I made a
12 mistake. Fancy that. We were going to have OIG
13 comment on alternative sanctions, and also public
14 comment. So can we just remove from the -- can we just
15 undo the motion we just made? I apologize to everyone
16 for rushing into a vote here. Thank you so much.

17 MR. GLOVER: No problem. Matthew Glover,
18 associate counsel for the OIG.

19 Obviously, the OIG favors flexibility in these
20 rules. We think the rules move in the right direction.
21 At this point, we think it makes sense to publish them
22 for comment.

1 In terms of the length of comment period, we
2 really hadn't thought about that issue all that much at
3 this point. I would say that we had already had a
4 workshop during which there was some input from the
5 field, which would seem to me to recommend a 60-day
6 comment period. But I don't think I can say that
7 that's a position of the office.

8 ACTING CHAIRMAN BeVIER: Thank you. I see
9 that the IG has come forward, and perhaps, Mr. Schanz,
10 you'll help us to resolve this.

11 MR. SCHANZ: Actually, Jeff Schanz, IG. I
12 would defer on the Corporation's general counsel's time
13 frames that usually gives X amount of days for public
14 comment. I would feel much more comfortable with
15 having somebody who has experience in how many comments
16 are engendered usually by a rule like this.

17 ACTING CHAIRMAN BeVIER: Oh, good. We're
18 getting a number of different points of view here. I
19 think we can take them under advisement and weigh them.

20 The formal legal term for what we are now
21 doing is a do-over.

22 (Laughter.)

1 ACTING CHAIRMAN BeVIER: It was meant to be an
2 inside joke, but there's nothing -- this is a public
3 meeting. Everything is on the record.

4 MR. FORTUNO: I was in and out of the room, so
5 I assume it's been addressed. But the statute requires
6 that we provide at least 30 days notice for comment.
7 So the question is, so long as we do 30 days, we can do
8 more. We need not do more. And the question really is
9 convenience and, you know, having time to comment. I
10 assume that was all discussed.

11 ACTING CHAIRMAN BeVIER: Yes.

12 MR. FORTUNO: And I think Mattie would
13 probably be the one best positioned to have a feel for
14 how many comments we might expect. It's hard to
15 predict, but I wouldn't think we'd have more than a
16 dozen comments, if that.

17 ACTING CHAIRMAN BeVIER: Well, I take it --

18 MR. FORTUNO: I think we're going to hear
19 from -- but, you know, this could be the one that
20 proves the exception.

21 MS. COHAN: Typically, it's been my experience
22 that we'll have comments from NLADA. We will have

1 comments from SCLAID. And then we will have comments
2 from a handful, maybe two handfuls, of individual
3 grantees.

4 For LSC, the issue is less the number of
5 comments than the complexity of them. It could be that
6 the comments are rather general in nature, or it could
7 be that the comments are very detailed in nature. If
8 we get comments of the variety, you know, what you're
9 proposing is a problem because it will hurt us
10 financially without a lot of detail, it takes less time
11 to respond to those comments than if the comments are
12 in the nature of, we think that the standards you've
13 proposed are not detailed enough. These are the
14 detailed standards that we would suggest you use, and
15 this is why. Obviously, that will take longer to go
16 through.

17 And I think that's -- and I'm just pulling
18 these as examples from stuff that, you know, we'd
19 heard. I'm not foreclosing or prejudging anybody's
20 comments. And I'm just saying also with 20 years of
21 sitting on both sides of the regulatory table as
22 regulator and regulated, the more complex the comments

1 are, the more time it takes the agency to work through
2 them; on the other hand, the more useful they are to
3 the agency.

4 So this is a complex issue of great import to
5 our regulated community. So I would not be surprised
6 to get fairly, you know, complex comments back from
7 them. I would certainly hope so, anyway.

8 ACTING CHAIRMAN BeVIER: Other comments from
9 the IG? From management? Suggestions about time
10 frames?

11 (No response.)

12 ACTING CHAIRMAN BeVIER: Well, I'll thank you
13 for giving us some options. I appreciate it very much.
14 And we will proceed now to public comment on this. Is
15 there public comment on the alternative sanction
16 recommendation -- rulemaking?

17 MS. PERLE: We're just going back and forth as
18 to who's going first. I'm Linda Perle from the Center
19 for Law and Social Policy, which is counsel to the
20 National Legal Aid and Defenders Association civil
21 membership.

22 MS. SINGLETON: Could you make sure that the

1 people on the phone can hear her? I'm not sure her
2 mike is close enough.

3 ACTING CHAIRMAN BeVIER: Yes. Tom, can you
4 hear her?

5 MR. MEITES: Just barely.

6 MS. PERLE: Is that better?

7 MR. MEITES: A little bit. Go ahead.

8 MS. PERLE: Okay. Well, it's right by my
9 mouth.

10 MR. MEITES: That's fine. Go ahead.

11 ACTING CHAIRMAN BeVIER: But something needs
12 to be done about the buzzing.

13 MS. PERLE: The board has -- this committee,
14 excuse me, has heard from me and understands that this
15 is a very important issue to field programs. I think
16 that Mattie will find that there will be a larger
17 number of comments on this rule if it's published than
18 rules that have been seen in the past.

19 I think that, in my view, the staff report
20 that the board saw was not particularly convincing, or
21 not at all convincing to me, as to why these additional
22 sanctions are needed and how they would help in the

1 situations that they described in the memorandum; that
2 in my view, taking money away from programs, either
3 through a 5 percent, up to a 5 percent, reduction or
4 through a six-month, potentially six-month suspension,
5 could only cause more harm to the programs. And I
6 don't really see how they would help in remediating the
7 situation that the Corporation has identified as an
8 issue of noncompliance.

9 I did a little review of situations that I had
10 been made aware of, and I talked to a number of people
11 about the kinds of issues that, you know, potentially
12 could be viewed as issues of noncompliance. And there
13 were many things that programs were concerned about
14 where there was a disagreement between the Corporation
15 and the program as to whether the program was in
16 compliance or not in compliance.

17 I don't think that the rule gives a lot of
18 information about whether these kinds of situations
19 would be those where these sanctions would be put into
20 play. I think that's a cause for great worry within
21 the community. I mean, I have lists of some of these
22 situations. I'm not sure that we necessarily have to

1 go into each of them.

2 I think that the information that the
3 Corporation gave about situations where they've used
4 the current sanctions that they have, many of these
5 were not issues -- really compliance issues.

6 Some of them were these situations where
7 there's disagreement between the Corporation and the
8 program as to whether there is noncompliance. A lot of
9 these are issues related to things like CSR programs,
10 which I think we'd all agree are probably not issues of
11 major noncompliance, but programs really don't know.

12 And a lot of these are situations that don't
13 deal with compliance at all. They're really management
14 issues. And particularly those situations where there
15 were terminations, for example, these are issues of
16 serious mismanagement. They're not particularly issues
17 of compliance or noncompliance.

18 And the Corporation's memo really didn't, for
19 me, give a sense of why the sanctions that they're
20 talking about would be preferable or needed. The
21 situations that they discuss, the examples that they
22 give, are all those that -- all ones that were resolved

1 using the current sanctions that the Corporation has
2 available.

3 You talked about the deterrence value of
4 these. Well, it seems to me that the Corporation could
5 threaten a 30-day suspension and say, if you don't fix
6 this problem within the next 60 days, then we're going
7 to suspend you for 30 days, that's going to get the
8 attention of any grantee.

9 The Corporation seems to suggest that what
10 they have available now is not really any kind of a
11 threat to programs. Well, I can tell you from my
12 conversations that I've had with programs that the fear
13 of being suspended for 30 days is a major, major
14 deterrent to doing anything or a deterrent to not
15 fixing whatever the situation is that the Corporation
16 has identified, even though in many situations the
17 programs don't agree with the conclusion that the
18 Corporation reached.

19 So I think that the current sanctions are a
20 major deterrent to action. And if the Corporation
21 wanted to threaten to take away -- to suspend a program
22 for 30 days, that would be a major deterrent, which is

1 something they haven't really used very frequently.

2 They haven't really talked about -- they did
3 not talk about how the sanctions that they're proposing
4 would have worked in dealing with the serious
5 situations that have been identified in the three or
6 four programs that have been terminated recently, or in
7 the last several years.

8 These are situations, again, as I noted
9 before, where the issue was not so much compliance but
10 that it was serious mismanagement. It seems to me that
11 reducing 5 percent of those programs' grants would not
12 have done any good. Suspending those grants would
13 probably not have done any good, either, because thee
14 are programs that really needed to be terminated.

15 So to me, it's not clear what would have --
16 what these sanctions would have accomplished. And in
17 fact, I think that in some situations it would have
18 made -- in many situations it would have made the
19 situation much worse because it would reduce the
20 resources that the programs had to serve their clients
21 and to take action to correct whatever problems exist.

22 I think that -- you know, I'm very concerned

1 with the lack of due process with regard to the
2 suspension. I think a 30-day suspension, there is a
3 limited due process. By extending it to six months,
4 you need to substantially increase the process by which
5 programs can oppose the imposition of that sanction.

6 You've heard me talk about this, and I'm not
7 going to go into any more detail. I'm happy to answer
8 any questions that the committee members have. But
9 it's something that I feel strong about and that I know
10 that people in the community feel very strongly about.

11 And I think that the rulemaking workshop,
12 there were a limited number of programs that
13 participated in that. There were a lot of reasons why
14 that happened. And I think that you will -- if you go
15 ahead and publish this, I think you will have a lot of
16 comments from the community. I think a 45-day -- just
17 to go back to your issue that you were discussing
18 before, a 45-day period is much too short. There is a
19 lot of process that goes into developing these comments
20 by field programs and other stakeholders who want to
21 submit comments.

22 So I think that a 60-day is certainly the

1 minimum amount of time that is reasonable. I
2 personally think that Karen's suggestion for a 90-day
3 period would be useful. I think a 60-day is absolutely
4 the minimum.

5 ACTING CHAIRMAN BeVIER: I think there's a
6 question for you. But should we wait until we've heard
7 from Deborah Hankinson, or would you prefer --

8 MS. SINGLETON: I'd like to ask Linda this
9 question.

10 ACTING CHAIRMAN BeVIER: Please go ahead,
11 then. Sarah has a question for you.

12 MS. SINGLETON: I fully appreciate that you
13 don't like this proposed rule. But if the only issue
14 today is whether to publish this notice of proposed
15 rulemaking, do you see how any harm comes from doing
16 that, assuming there's enough time given for programs
17 and other interested entities to get their comments
18 together?

19 MS. PERLE: Well, my feeling about that is
20 once it's published, the train has left the station.
21 And I think it's much harder for you to make a decision
22 to withdraw something where the process has already

1 started than it is to stop it at the outset.

2 So in my view, yes, I would much prefer that
3 this not be published. What I've heard, based on the
4 vote that you took before the public comment, is that
5 that's not likely to happen. But yes, I think that it
6 would be much preferable not to go down that road.

7 MS. SINGLETON: Could I ask a follow-up
8 question of Mattie, then?

9 ACTING CHAIRMAN BEVIER: Certainly.

10 MS. SINGLETON: I have to say, and the kinds
11 of regulations that I look at in my practice are aimed
12 at a different group than what these are, and the
13 agencies that are publishing them maybe are more set in
14 their ways than this group is.

15 But this train has left the station. In my
16 experience, if they publish a rule, the train hasn't
17 only left the station, but all the tickets have been
18 sold already and all this commenting is kind of window
19 dressing.

20 Now, is that not the case for our rules?

21 MS. COHAN: Well, I certainly -- I certainly
22 don't think so, and that's certainly within the control

1 of the committee and the board. Just because you've
2 published a draft notice of proposed rulemaking, if you
3 don't want to continue it, I can't make you do it.

4 And I will say in the time that I have been
5 here at the Corporation, two different rulemakings got
6 put down for a couple of years, one of which never got
7 picked back up again. And it was eventually formally
8 closed because there was no desire on the part of the
9 board to continue the rulemaking.

10 Now, there was a change in board, but it
11 still -- I think the principle stands, is that it's in
12 your control. If you feel the need to do something
13 just because you've published a proposal, then you do
14 what you choose to do.

15 But it's entirely -- and I think especially
16 given the time frames that we're looking at, and that
17 we're also looking at kind of another aspect of this
18 issue that we're planning on discussing in January, I
19 think the committee has clearly expressed an opinion
20 that they're not convinced what is the right path to
21 do.

22 And I think that's -- you know, that's fine.

1 I think that's -- from my standpoint, that's part of
2 the reason to move forward with the publication. And
3 instead of continuing to have these sort of informal
4 discussions at this table where there's, you know,
5 information alluded to -- the notice, the staff report,
6 whatever it does or doesn't do, it responded to the
7 questions that we were asked by the committee.

8 If the committee doesn't feel we responded to
9 their questions, that's something we should know. But
10 we answered the question we were asked. If Linda does
11 not feel that we -- we should have answered a question
12 that we weren't asked, I'm not commenting on that one
13 way or the other.

14 But I think it's now -- I think this
15 discussion indicates why it's useful to take the next
16 step, get something proposed and published for a formal
17 comment, and this way, instead of just having this kind
18 of loose back-and-forth, we get those detailed written
19 comments from all of those parties who want to comment,
20 including those individual grantees who don't have the
21 luxury of sitting here at the board table with us.

22 Get all of that information in. Get it

1 presented to the committee. And then the committee and
2 the board will then have had the opportunity to have
3 said, we have considered this in full, in public, in
4 detail, and in the fullness of our time and our
5 discussions, our considered opinion is X.

6 Whatever that opinion is, I just think -- you
7 know, my regulatory background tends to be procedural,
8 and I think there is a real value in using the process
9 that you have because it airs all of the necessary
10 information.

11 You know, you heard a lot of what the
12 participants in the workshop had to say. Management
13 presented a summary report that said, this is what we
14 heard at the workshop, but specifically didn't respond
15 because we were still in the information-gathering
16 stage.

17 We responded to the questions asked, but we're
18 not sitting here wanting to have that substantive
19 discussion of the pros and the cons of the minutia of
20 the proposed rule. Because of the nature of this
21 proposed rule, it's going to be really hard to do that
22 in this sort of informal discussion, and therefore

1 management believes it will be more useful to the
2 process to move that ball forward that way.

3 ACTING CHAIRMAN BeVIER: Other questions?

4 (No response.)

5 ACTING CHAIRMAN BeVIER: All right. Deborah
6 Hankinson. More public.

7 MS. HANKINSON: Deborah Hankinson, chair of
8 the ABA Standing Committee on Legal Aid and Indigent
9 Defendants.

10 The staff memo provided to the committee and
11 to the board for this meeting was not available at the
12 time that SCLAID submitted its October 21, 2008 letter
13 commenting on the alternative sanctions concept. But
14 having now had the opportunity to read that memo, there
15 are a few additional points that I would like to make
16 and I would like to respond to the memo.

17 First, for all the reasons set out in our
18 letter to President Barnett, we believe that LSC
19 already has sufficient tools at its disposal to assure
20 compliance with its regulations. This was one of the
21 questions, obviously, the committee asked the
22 Corporation to respond to, and I'd like to address some

1 of the points in the staff memo on this topic.

2 The staff memo points out that suspension is
3 best suited to provide an incentive for compliance, not
4 to address previous violations that have already been
5 cured. The memo claims that a longer period of
6 suspension is necessary to provide an incentive for
7 compliance and to prevent a legal aid program from
8 merely waiting out the suspension of 30 days.

9 It's been my experience that few if any legal
10 aid programs are in a position to wait out a 30-day
11 interruption in their major source of funding from LSC.

12 The staff memo at page 3 gives an example of a
13 situation where a program failed to give access to its
14 auditors. In such a case, there would likely be a
15 failure to have an acceptable audit under Part
16 1623.3(c).

17 LSC claims that it needed more than 30 days to
18 work this program out, and that a longer suspension
19 would have been helpful. But the existing regulation
20 already gives LSC the power to impose an indefinite
21 suspension under the circumstance. Part 1623.4(f)
22 authorizes an indefinite suspension for a failure to

1 have an acceptable audit. So again, it seems that the
2 existing tool is fully sufficient to address this
3 problem.

4 The staff memo gives other examples that I
5 found a bit puzzling. On page 4, it offers case study
6 No. 1, but that discussion seems to suggest that LSC
7 needs tools to impose punishment, not to remediate a
8 problem. And I don't think that punishment is an
9 appropriate use of sanctions. A recipient will have
10 sufficient incentive to avoid a repeat of an offense if
11 it is forced to refund grant money to LSC.

12 The staff memo also offers case study No. 2 as
13 another example, but that example shows that LSC
14 already had sufficient tools to address the problem.
15 Under pressure, the recipient voluntarily refunded
16 money to LSC. No additional sanctions were necessary.

17 The staff memo suggests in several places that
18 existing sanctions are insufficient because they
19 require too large an investment of resources for
20 imposition. With all due respect, it seems that the
21 procedures required under the existing sanctions
22 regulations are not particularly onerous. They mostly

1 require internal LSC processing. Further, I believe
2 that serious sanctions should not be imposed without
3 due process so that the target of the sanction has an
4 opportunity to be heard.

5 The staff memo says that the existing sanction
6 of short-term funding can be destabilizing or
7 debilitating for a legal aid program, and suggests that
8 a lengthy suspension of funding is a better option than
9 month-to-month or short-term. I really don't
10 understand the logic of this position. Suspension for
11 a length period of time can be equally destabilizing,
12 and could put a program out of operation.

13 Second, we remain concerned that the draft
14 notice of proposed rulemaking simply does not give
15 sufficient guidance on when these sanctions are
16 appropriate, nor does it provide sufficient due process
17 for these sort of sanctions which I believe are
18 draconian.

19 Next, as we described in our letter, there is
20 very real risk that expanded sanctions could be misused
21 by a different LSC administration, and there is a
22 similar risk that LSC opponents to target a particular

1 legal aid program and use political pressure to try to
2 force a quick and inappropriate imposition of these
3 expanded sanctions when the legal aid program is merely
4 guilty of zealous but permissible advocacy that has
5 threatened vested interests.

6 Finally, even if you do not think that the
7 existing sanctions are sufficient, I would ask that you
8 consider how these new sanctions are going to play out
9 on the ground. And this, I think, is the point that's
10 most important to me and I think to SCLAID. I think
11 you will find that such sanctions punish the wrong
12 people, the clients.

13 Most legal aid programs are just like any
14 other small business or law firm. They struggle with
15 maintaining an adequate revenue stream to keep abreast
16 of expenses. But there is one key difference. If
17 there is an unexpected interruption or reduction in
18 revenue, they cannot simply reduce profits. Instead,
19 they have to reduce services.

20 Most legal aid programs would struggle to cope
21 with a 30-day suspension in LSC funding. Some may be
22 able to obtain bridge loans to get through that sort of

1 interruption in revenues. But most will be hard-hit by
2 such a sanction. They still have to pay rent and
3 salaries and other overhead. It is almost certain that
4 furloughs of staff or lawyers would result from a
5 30-day suspension. As a result, clients will go
6 unserved.

7 Just imagine the impact of a 180-day
8 suspension. Layoffs would be a certainty, and cases
9 and clients would go unattended. The justice gap would
10 be wider.

11 The impact of a 5 percent permanent reduction
12 in funds would be similar. Layoffs would be a near-
13 certainty following such a sanction. Clients would
14 suffer. The LSC recipient may be chastened by this
15 sort of sanction, but it would be the clients who
16 really get hurt. And it seems to me that's what really
17 matters and should be considered.

18 I urge that the committee decline to proceed
19 toward adopting these alternatives sanctions. I
20 believe there has been sufficient comment to date.
21 There has been sufficient investigation to show that
22 there is no need for the sanctions, and that the harm

1 that they could cause to clients would be substantial.

2 And absent any more need having been
3 identified, and without the requisite specificity and
4 due process having been provided for, I believe that
5 the committee should decline to proceed toward adopting
6 these alternative sanctions, as I agree with Sarah that
7 posting them for public comment does put us in a
8 position with the train having left the station without
9 sufficient cause to send it down the track. Thank you.

10 ACTING CHAIRMAN BeVIER: Thank you. Are there
11 questions for Ms. Hankinson?

12 MR. MEITES: Yes. Lillian, I have a question.

13 ACTING CHAIRMAN BeVIER: Tom?

14 MR. MEITES: Deborah, punishing the grantee --

15 ACTING CHAIRMAN BeVIER: Tom? Tom?

16 MR. MEITES: Punishing the grantee has all the
17 problems that you have laid out. And I think we all
18 agree it's an imperfect measure. However, we have had
19 in the last several years, and really more recently in
20 the last year, several grantees who are just seriously
21 derelict in their responsibilities.

22 And I think we all agree that we're looking

1 for ways not just to get a grantee's attention, but to
2 have the grantee respond to problems promptly and
3 effectively. I think that the reason for publishing
4 the rule is as much as to call our community's
5 attention to this problem as to advance a solution.

6 Your comments on the substance are well taken,
7 and I really don't know that I would expect -- and I
8 would hope that your organization would take exactly
9 that position. But what we need is some ideas as to
10 what else we can do because I think there's a feeling,
11 at least among some members of the board, that some of
12 our grantees simply are not responsive to the present
13 regime.

14 So what I would suggest is we publish with
15 90 days, and in that 90 days we all think about is
16 there better ways as this way may not be even a good
17 way. And I am confident, and I want to assure Sarah,
18 that certainly our committee -- no tickets have even
19 been printed, let alone sold, on this train. But I
20 think moving ahead is the way to get as many voices
21 heard in this area as we can.

22 ACTING CHAIRMAN BeVIER: Thank you, Tom.

1 Are there other questions or comments?

2 Ms. Singleton?

3 MS. SINGLETON: I apologize because I am not
4 on this committee, and did not even hear the last
5 committee meeting. And this is a follow-up to what Tom
6 just said.

7 I disagree with both Linda and Deborah when
8 they say -- to the extent that they say LSC has all the
9 sanctions it needs. Based on what I've observed or
10 heard about, the problems that some programs have had
11 in the area that I would call serious mismanagement, I
12 don't believe LSC has an effective way to deal with
13 that.

14 My problem with this proposed rule is I don't
15 believe it's an effective way to deal with it, either.
16 And I know that at least on some occasions, we have
17 talked about whether or not LSC would have the ability
18 to put a receiver in place or something of that nature,
19 even temporarily, to clean up a program that just is
20 incapable of managing itself correctly.

21 Has any thought been given to proposing in the
22 rule that kind of a remedy?

1 MS. COHAN: Well, when did our research into
2 formal receivership, that's something that has to be
3 imposed by a court. A receiver is imposed by a court.
4 It's generally a measure of last respect. And it's
5 usually in connection with some other ongoing
6 litigation that judges are generally very loath to
7 impose a receiver as -- if you go into court, if that's
8 the first thing you're looking for is to get the
9 receiver, the judge is almost never going to actually
10 do it that way.

11 I can have -- that was in one of the -- a
12 whole discussion of this was in one of the previous
13 staff reports, and I would be happy to make sure that
14 you got another copy of it.

15 MS. SINGLETON: I would --

16 MS. COHAN: I apologize that I don't have
17 enough of that in my decongestant-soaked brain at the
18 moment to go through all of the details of it. But I
19 remember we did legal research into it and looked into
20 it, and it did not seem like it would be a useful
21 option kind of as a go-to kind of thing; or
22 alternatively, under some other different statutory

1 authority where we didn't have to go through the
2 traditional court system type receivership, would
3 require statutory authority. It's not something that
4 the Corporation has its own authority to do that way.

5 MS. SINGLETON: Well, I guess that's the part
6 I'm more interested in. If the Corporation adopted a
7 regulation that said one of the sanctions it can take
8 in the case of noncompliance or mismanagement is to
9 appoint someone to be -- I'm going to put it in quotes
10 now -- a "receiver," why wouldn't that be sufficient?

11 MS. COHAN: Well, that raises questions that
12 we don't -- we're separate corporate entities, that the
13 Corporation does not have the legal authority to just
14 essentially -- I mean, a receiver that way essentially
15 takes over the day-to-day operations and is
16 responsible --

17 MS. SINGLETON: But if --

18 MS. COHAN: -- for those. So we don't have
19 the authority under federal or state law to interfere
20 with the program's legal right to exist and operate
21 that way. I mean, there are -- it's not to say that
22 there couldn't be some sort of statutory system to

1 create that authority. But that's something the
2 Corporation obviously can't do on its own.

3 MS. SINGLETON: Well, I think as a primary
4 lender to an entity, you can say, if you don't meet the
5 terms of our agreement under which I'm lending you
6 money, I can do this and control your board of
7 directors.

8 Now, I'm not certain -- and they're totally
9 separate entities. I'm not certain why the Corporation
10 couldn't craft some kind of a regulation that would
11 have the effect of, by agreement, doing the same thing.
12 And the agreement would come in the form of, you
13 accepted my grant; therefore, you accept my ability, if
14 you mismanage the grant, to be able to do this.

15 ACTING CHAIRMAN BeVIER: Can't it be in the
16 grant assurances?

17 MS. COHAN: I mean, I think there -- again, I
18 apologize because it's been a while. I think there are
19 some significant legal issues with respect to whether
20 we actually could do that, whether a board of directors
21 with its fiduciary duty could agree to abdicate or
22 abrogate its authority that way, in advance.

1 There are policy legal questions with respect
2 to what liabilities the Corporation would or would not
3 want to assume or could or could not assume by taking
4 control of one of its programs.

5 And I think in the private sector, generally
6 when they want to get a receiver, they get a receiver
7 appointed because they're doing it ancillary to a court
8 action and the court is appointing the receiver, not
9 just -- Bank of America doesn't just appoint a receiver
10 over somebody.

11 ACTING CHAIRMAN BeVIER: I wonder if, though,
12 Mattie, what we could do is ask for some attention to
13 be given by staff between now and January because I do
14 think -- one of the reasons we started this, if I
15 remember correctly, is because of a feeling at
16 management level that there is not sufficient
17 flexibility with respect to how to further incentivize
18 both good management and good compliance with regs and
19 oversight.

20 That's been the issue all along. It's
21 inflexible, and I think the committee's concern has
22 always been with precisely what Deborah says. You

1 know, of course it's not the grantees that suffer, it's
2 the clients, and that's a concern. Of course it is.
3 But there is, on the other side, some sense that we
4 need some flexibility.

5 So I would invite management to present us
6 with, you know, a sense, a review, of that alternative.
7 And at the same time, we're going to be talking about
8 options with respect to the grantees' boards. And I
9 think that will be a helpful discussion to have.

10 Yes, Bernice? Oh, I'm sorry. Excuse me.

11 MR. GLOVER: Could I make a comment to the
12 receivership point and also the target of the -- what
13 sort of comment is being targeted by the proposed
14 notice?

15 First of all, I think it's safe to say that
16 the IG is slightly more optimistic about the ability to
17 sort of, out of the powers that LSC has, to craft
18 something like an influence receivership type
19 arrangement. We haven't investigated the issue
20 completely, but that's our general sense.

21 Having said that, that is a more complicated
22 project, and I'm not sure that that should delay going

1 forward with the sanctions that are now being talked
2 about.

3 I think while true that these sanctions may
4 target these systematic mismanagement situations that
5 are the, for lack of a better way of talking about
6 them, the horror stories that pop to mind of the few
7 bad apple grantees that ultimately end in some sort of
8 termination or something like that, there are other
9 situations that these sanctions can have a significant
10 impact on.

11 If you look at the 1996 restrictions, a lot of
12 them are not, in the first instance, concerned with
13 money but with activity. And some of those activities
14 can be conducted, you know, with very little
15 expenditure.

16 Take, for example, lobbying activities, or
17 there are various -- LSC has various accounting rules
18 about derivative income and so forth that can be -- you
19 know, could be avoided until seen and then sort of
20 fixed on the books without significant cost or
21 significant sanction if we rely on questioned cost.

22 But these are violations that are -- probably

1 do not rise to the level where we would want to
2 terminate a program. So we're left with pretty much a
3 questioned cost approach, which would basically provide
4 no significant counter-consideration to engaging in
5 these activities for a bad apple grantee that is
6 inclined to do that, or termination, which is not a
7 realistic or desirable option in many cases.

8 So I just wanted to clarify that I don't think
9 that we're only talking about the serious cases of
10 mismanagement where it sounds like a lot of people seem
11 to agree that in some of these cases, the only
12 solution, unfortunately, is to look for another -- in
13 the long term, to look for another grantee in the area.
14 It can affect other cases, I guess is the point.

15 And one more quick point that I'd like to
16 make. I hesitated to sort of even make these comments
17 because I think that we are getting very far down the
18 road of talking about the substance of the rule, and in
19 doing that, we risk privileging a few public comments
20 over the public comments that we might receive in a
21 public rulemaking process.

22 And ultimately, it seems like it's a better --

1 it's a more reasonable rulemaking process to hear from
2 everybody as opposed to a handful of people about what
3 the substantive merits or demerits of the --

4 MR. MEITES: Lillian, who is the speaker?

5 MR. GLOVER: This is Matthew Glover with the
6 OIG.

7 MR. MEITES: Thank you.

8 MS. PHILLIPS-JACKSON: I'm never in favor of
9 hurting innocent people, especially clients. So I'm
10 not sure that -- I don't understand why we have to have
11 a sanction such as this. And also, why can't we create
12 something else, like going into the grantee's community
13 and educating their board, or communicating with their
14 board of directors and explaining the seriousness of
15 what this is about?

16 MS. COHAN: At the risk of continuing to
17 prolong the substantive discussion, which I agree with
18 Matt that this is why management is recommending that
19 we publish the comment and do this in a little more of
20 an arm's length, notice to the world way, I will say
21 management doesn't want to hurt clients, either,
22 obviously.

1 But things -- and it may be that additional
2 training -- we're going to have this whole discussion
3 of the role of the grantee governing body, that there's
4 some fruitfulness there. That doesn't come without
5 cost.

6 And if the grantee has to pay for -- I mean, a
7 receiver doesn't just, you know, appear out of the air.
8 Somebody has to pay somebody to do that. If it's an
9 LSC staff person, well, then the cost is LSC isn't
10 getting that staff person's time and resources to do
11 other Corporation business.

12 If it's a consultant, somebody has to pay that
13 consultant. If it's the grantee, well, whether the
14 grantee is paying for a consultant or the grantee is
15 paying a fine, that's still money coming out of the
16 grantee. And, now, there may be policy reasons why
17 you'd rather have the money going to one thing that
18 another. But it's still not a no-cost option.

19 And I think the other thing to keep in mind is
20 when you have violations, if the Corporation has no way
21 of dealing with -- no effective way of dealing with
22 them, particularly, at least -- you know, most of the

1 things that came up are in fact effectively dealt with.
2 I think we've stipulated to that repeatedly. But then
3 you get outliers.

4 Sometimes they're the outliers with these huge
5 management problems that create situations where there
6 are in fact lots of violations. Sometimes it's just,
7 how one big blatant violation of one of our
8 restrictions that there's not really a questioned cost
9 or whatever.

10 It turned out to be a no-cost violation to
11 that particular program, but it's very much a cost to
12 the overall program when Congress looks at us and says,
13 you know, we set out these restrictions, and your
14 grantees violate them, and there's nothing effective
15 you can do about them. You know, that puts everybody
16 at risk.

17 So I think that's part of the value of the
18 system. And, you know, one of the things that
19 management is looking at in this rulemaking and in this
20 general discussion is a variety of tools. Just because
21 if there was an extended suspension program, to suggest
22 that every time there was any violation, management

1 will all of a sudden slap a 180-day suspension on
2 somebody regardless of what the circumstances were I
3 think is not just -- it's just not realistic.

4 And I don't think that advances the game very
5 much. I don't think it advances getting us towards a
6 solution to the problem. You know, I don't think very
7 much people have been hurt by having more tools at
8 their disposal than fewer.

9 But I really don't -- I don't want to get into
10 a point-by-point refutation because that's not -- we
11 would rather do that in the context of having written
12 comments that everybody's had a chance to look at and a
13 detailed, thoughtful response to all of them.

14 ACTING CHAIRMAN BeVIER: Thank you, Mattie.
15 And I think we should remember that what is before us
16 is to recommend to the board that we publish a notice
17 of proposed rulemaking. I would like to re-invite the
18 motion that was mistakenly put before us and has been
19 declared inoperative.

20 Is there a motion to recommend to the board
21 that we publish the notice of proposed rulemaking? And
22 if that motion would include a time period, I would

1 appreciate it. Tom, are you there?

2 M O T I O N

3 MR. MEITES: Yes. I make such a motion, with
4 a 90-day time period.

5 ACTING CHAIRMAN BeVIER: All right. Is there
6 a second?

7 MR. HALL: Second.

8 ACTING CHAIRMAN BeVIER: All those in favor?

9 (A chorus of ayes.)

10 ACTING CHAIRMAN BeVIER: All those opposed?

11 (No response.)

12 ACTING CHAIRMAN BeVIER: We have one
13 abstention. We have one abstention.

14 Thank you very much, all of you, for your
15 comments. We appreciate it. I do invite you to
16 remember that this train, the whole reason that we're
17 so -- that we've taken so long is we take it very
18 seriously. We are uncertain what to do, and we're
19 trying to do the right thing for everyone. Okay?
20 Thank you.

21 MS. SINGLETON: You're better than Homeland
22 Security, I'll tell you that.

1 ACTING CHAIRMAN BeVIER: What?

2 MS. SINGLETON: You're better that Homeland
3 Security.

4 ACTING CHAIRMAN BeVIER: At what, protecting
5 everyone?

6 MS. SINGLETON: Probably.

7 (Laughter.)

8 ACTING CHAIRMAN BeVIER: Yes, well, no liquids
9 on board.

10 Next, Tom, I need your help here. We miss you
11 because we are --

12 MR. MEITES: I wasn't going to say anything,
13 Lillian.

14 ACTING CHAIRMAN BeVIER: -- beginning to run
15 out of time. We're not out of time; we've got some
16 time left. But you have such a way of helping us to
17 expedite our agenda that I wish you'd step in and tell
18 me if you can think of some says with respect to this
19 agenda.

20 MR. HALL: His magic is just to skip
21 everything.

22 (Laughter.)

1 ACTING CHAIRMAN BeVIER: I know. But I'm just
2 kind of wondering what we can put off till next time.
3 We've already put off one thing till next time.

4 MR. MEITES: Oh, I can guarantee you we can
5 put off the discussion of the independent public
6 accountants again. That is something that always is at
7 the bottom of the list and always gets put off.

8 ACTING CHAIRMAN BeVIER: Public comment? What
9 did you say? We can put that off? No.

10 MR. MEITES: The discussion of the independent
11 public accountants.

12 ACTING CHAIRMAN BeVIER: Independent public
13 accountant. Well, that's a hard one, but I guess it is
14 No. 7.

15 So let's proceed to No. 4 on the agenda, and
16 we'll see if we can --

17 MS. COHAN: This will be fast.

18 ACTING CHAIRMAN BeVIER: This will be fast, we
19 are assured. However, it may prove controversial.

20 Consider and act on Draft Final Rule
21 implementing Open Government Act changes to the federal
22 Freedom of Information Act. Staff report. Mattie.

1 MS. COHAN: This is a draft final rule for
2 the committee's consideration. And management is
3 recommending that the committee recommend that the
4 board approve the final rule for publication. It's
5 changes to the Corporation's Freedom of Information Act
6 implementing regulations.

7 Nearly all of the changes are merely
8 implementing statutory changes about which there was
9 really no controversy, no dissension. There were a
10 couple of other technical amendments that we made since
11 we were doing the rulemaking to get rid of some
12 obsolete addresses.

13 The biggest non-required change was to include
14 the Office of the Inspector General as its own FOIA
15 unit so that requests -- currently, requests come in to
16 us and then get sent over to the OIG if they're
17 requests for OIG records. And almost everybody else in
18 the federal government, their OIG can get their own
19 requests and deal with them. And we wanted to do that.

20 The Office of the Inspector General has been
21 involved in the process, both the development of the
22 proposed rule and the development of the draft final

1 rule. And to my understanding, they are perfectly
2 comfortable with this as proposed. And we received no
3 public comment during the comment period.

4 ACTING CHAIRMAN BeVIER: Thank you, Mattie.
5 Is there comment from the Office of the Inspector
6 General?

7 MR. SCHANZ: Madam Chairman, we were involved
8 in the drafting of the rulemaking and are very
9 comfortable with it.

10 ACTING CHAIRMAN BeVIER: Thank you.

11 MR. SCHANZ: And what Mattie has said about
12 the other IGs in government is absolutely correct.

13 ACTING CHAIRMAN BeVIER: Thank you. That
14 seems -- that's very nice to hear.

15 Is there public comment on this? Bernice?

16 MS. PHILLIPS-JACKSON: And I realize that this
17 is not a FOIA question directly related to amending the
18 regulation. But this is my opportunity to ask this
19 question.

20 Two years ago we sent I believe it was a FOIA
21 improvement plan to the Justice Department. Two years
22 ago I asked about this FOIA software. And I've been

1 told that you guys were working on it.

2 Now, I haven't heard anything. I think this
3 is a priority that we should look -- we should look at
4 this because it is part of the LSC Act, is it not, or
5 statute?

6 MS. COHAN: The LSC Act makes LSC subject to
7 the Freedom of Information Act.

8 MS. PHILLIPS-JACKSON: And I haven't read
9 anything about -- a report or anything about it. I
10 just wanted to know if we could put this on our next
11 agenda, a report saying what we've done and what's
12 taken place, to make sure that the staff is being
13 provided with the proper tools to make sure that this
14 gets done, the FOIA requests get done.

15 MS. COHAN: If I understand you, you're asking
16 that the committee put on its next agenda an item
17 regarding FOIA administration, how FOIA is being
18 administered and Corporation resources to it?

19 MS. PHILLIPS-JACKSON: Right.

20 MS. COHAN: That's the committee's pleasure.

21 MS. SINGLETON: And specifically the status of
22 the new software.

1 MS. PHILLIPS-JACKSON: Right. And the status
2 of the -- right.

3 ACTING CHAIRMAN BeVIER: Well, if we're going
4 to have that as an agenda item, I can just ask you to
5 include a couple of questions that I was going to have.
6 I don't know what the statistics are in terms of how
7 many FOIA requests LSC gets per month, per year. And I
8 don't know whether we're in compliance.

9 And so it's very -- it's important to know
10 whether timely compliance with FOIA requests is a
11 problem for the Corporation. I just really don't -- I
12 mean, I share with Bernice some -- I am very ignorant
13 about it. So I would appreciate a response.

14 MS. COHAN: I know we are generating our
15 required FOIA reports, and a lot of the information
16 regarding -- a number of reports that come in, when
17 they're processed, I believe that is covered by those
18 reports although we have now exhausted my store of
19 knowledge about the content of those reports.

20 ACTING CHAIRMAN BeVIER: Oh, good. And maybe
21 we can just hope that that will be something on the
22 agenda for next time.

1 So we have before us a request that we
2 consider and act on the draft final rule implementing
3 this, that we recommend the Open Government Act changes
4 to the FOIA. Do I have a motion to recommend this to
5 the board?

6 M O T I O N

7 MR. HALL: So moved.

8 ACTING CHAIRMAN BeVIER: Is there a second?

9 MS. PHILLIPS-JACKSON: Second.

10 ACTING CHAIRMAN BeVIER: All those in favor?

11 (A chorus of ayes.)

12 ACTING CHAIRMAN BeVIER: Thank you. That is
13 done. So we're moving on to --

14 MS. COHAN: I told you it would be quick.

15 ACTING CHAIRMAN BeVIER: -- No. 5, which is a
16 staff report on LSC's relationship with other entities
17 providing disaster assistance. And my understanding is
18 or my hope is that this can be -- and I think this is
19 the way you wanted to handle it, Tom. This is -- we'd
20 like the staff to just give us a bit of information.

21 MR. MEITES: Yes. I think we have the
22 information in the report. I think I have some

1 questions, but that's about it.

2 ACTING CHAIRMAN BeVIER: Okay. Go ahead. We
3 do have the information, actually, in the report that
4 we have in our board books. It may not be necessary to
5 repeat that --

6 MR. MEITES: No.

7 ACTING CHAIRMAN BeVIER: -- since presumably
8 we have all read the board book.

9 MR. MEITES: Let me ask my two questions.

10 ACTING CHAIRMAN BeVIER: Certainly.

11 MR. MEITES: I have a little trouble hearing,
12 but let me ask them.

13 First of all, I never understood why the ABA
14 Young Lawyers section is the point person for FEMA.

15 ACTING CHAIRMAN BeVIER: Tom?

16 MR. MEITES: Yes?

17 ACTING CHAIRMAN BeVIER: Tom, I hate to
18 interrupt you, but there's something the matter with
19 the way we are receiving your phone.

20 MR. MEITES: All right.

21 ACTING CHAIRMAN BeVIER: It's kind of
22 staticky.

1 MS. SINGLETON: He's on speaker. Ask him to
2 pick up.

3 MR. MEITES: Is this better? Can you hear me
4 better now?

5 ACTING CHAIRMAN BeVIER: That's -- yes.
6 You're going to have to yell, but it's better.

7 MR. MEITES: Can you hear better now?

8 ACTING CHAIRMAN BeVIER: I think that's
9 better, yes.

10 MR. MEITES: Okay. First question is, I've
11 never understood why by the ABA Young Lawyers section
12 is the point person with FEMA. People have explained
13 it. It's history. It's okay. We work with FEMA. We
14 work with the ABA. Having said all that, it seems that
15 the logic point entity for dealing with FEMA would be
16 the Legal Services Corporation.

17 Second, regardless who the point person is, I
18 do not understand why FEMA's grant when it feels
19 there's a need for on-the-ground lawyers is an
20 unspeakably small \$5,000.

21 Those questions are not necessarily related,
22 but they both deal with the fact that FEMA has

1 substantial national responsibilities conferred by
2 Congress. We have substantial national
3 responsibilities conferred from Congress. Those
4 responsibilities, in the case of a disaster, are both
5 burdensome, expensive, and important.

6 So I would like to inquire as, first of all,
7 what -- well, I raised my questions. Let me leave it
8 at that.

9 ACTING CHAIRMAN BeVIER: Karen?

10 MS. SARJEANT: This is Karen Sarjeant. I'm
11 going to try to answer those questions. Let me start
12 with the second one. I'm not sure why the FEMA amount
13 is \$5,000, and I don't think we can answer that for
14 you. So let me take a shot at the first question.

15 In terms of our relationship with FEMA and the
16 ABA and the YLD, I really think that this has been --
17 and this may not be the answer you want -- but it's
18 been an established relationship. LSC has looked to
19 partner and be an active participant in helping to
20 develop a national infrastructure.

21 And we have not at any point thought that we
22 should attempt to supplant the ABA/FEMA contract and

1 somehow insert ourselves into that in a way that
2 created problems with this national partnership.

3 So I hear what you're saying, and I think that
4 the work that's been done over the last two years has
5 made a substantial improvement in how LSC is engaged in
6 the collaborative work with the ABA and FEMA in the
7 face of disasters.

8 ACTING CHAIRMAN BeVIER: Does that help you?

9 MR. MEITES: That's a response. I don't think
10 it's an answer. I for one do not think the ABA's Young
11 Lawyers section should be the point person. I, for
12 one -- I think it should be us, the Legal Services
13 Corporation.

14 We have in every state in the United States a
15 grantee that is extremely capable and skilled and
16 experienced in dealing with the kind of legal problems
17 that disasters create. The ABA's Young Lawyers section
18 has, as far as I know, a large number of very eager,
19 very committed, and highly untrained people who need
20 the guidance of our grantees.

21 It seems that this arrangement is exactly
22 backwards or upside down. Now, perhaps no other member

1 of the committee shares this concern. But I have felt
2 it from the first time I heard of this arrangement.
3 And it seems to me that our staff should -- I would
4 like to see our staff explore whether and why this
5 relationship exists, and whether we believe as a
6 Corporation we are fulfilling our mandate by accepting
7 this arrangement.

8 MR. HALL: Tom, I would -- you know, I
9 certainly embrace your curiosity around it. But
10 speaking from the Provisions Committee, I mean, one of
11 the things we are trying to promote is getting lawyers
12 involved in these sorts of issues. And getting young
13 lawyers seemed like it would be something we would want
14 to encourage.

15 These are, I would imagine, for the most part
16 lawyers who are engaged in other type of practice. And
17 if that association is encouraging their members to be
18 concerned about disaster relief for, I would imagine,
19 people who are poor, we should be promoting that, not
20 trying to send a message to them, get out of this
21 business because we have the monopoly.

22 ACTING CHAIRMAN BeVIER: I think that --

1 MR. HALL: So I just think there's another --
2 as long as there's coordination and we are involved, I
3 don't know why we would want to say to the young
4 lawyers, this is our turf and you don't belong here.

5 ACTING CHAIRMAN BeVIER: I understood Tom to
6 be saying it's not so much that we don't want to work
7 with them at all and it's not so much that they should
8 get out of the playground because we have a
9 reservation. It's rather that the point person for
10 this should be Legal Services Corporation. They should
11 be the ones that are sort of in charge of the
12 coordination. They're the ones that can identify the
13 needs.

14 Am I interpreting you correctly, Tom, when I
15 respond in that way?

16 MR. MEITES: That's correct.

17 MS. SARJEANT: I think that over the last two
18 or three years, as we have been working on this issue
19 collaboratively with the ABA and with the Red Cross and
20 others who are involved in this, what is happening is
21 that there's much more communication between the ABA
22 YLD setup at the time of a disaster. They're talking

1 to our programs. They're using the expertise that is
2 there.

3 And I just think that we're started down this
4 road, and it is setting up to be very functional in
5 developing a national infrastructure that involves our
6 programs in a very effective way in disaster
7 assistance. And I just don't think that LSC should be
8 in the position of trying to play turf here.

9 ACTING CHAIRMAN BeVIER: I think your report,
10 by the way, is extremely impressive in terms of the
11 relationships that you have developed and that we are
12 partnering with, and the strategies that you've put in
13 place. I just -- I was very encouraged by the
14 initiative that you've taken. So that's just --

15 MR. MEITES: Well, let me --

16 ACTING CHAIRMAN BeVIER: Go ahead, Tom.

17 MR. MEITES: If no one else on the committee
18 shares my concern, then my concern will have to wait
19 another day.

20 Let's talk about the other question I raised.
21 I had raised before the issue of obtaining monies from
22 federal agencies rather than Congress. And what I

1 gather is for some reason, which I have never had fully
2 articulated, we shy away from that.

3 I would appreciate it if maybe Charles or
4 someone would articulate, A, is there concern about
5 getting federal money from sources other than Congress.
6 And if there's not, I'd like to hear someone to explain
7 to me why FEMA can only afford \$5,000, which is absurd.
8 Clearly no one has asked FEMA to ask our disaster
9 recovery coordination efforts.

10 So question 1 is: Is there a policy reason
11 why we shouldn't ask FEMA for money? And B, if there's
12 not, why haven't we?

13 ACTING CHAIRMAN BeVIER: Charles? You heard
14 the question, I assume, from Mr. Meites.

15 MR. JEFFRESS: This is Charles Jeffress. I
16 will see whether I heard it well enough. Tom, might I
17 ask a follow-up?

18 In terms of additional money for disaster
19 assistance when it occurs, the Corporation has
20 occasionally received it in a supplemental bill, way
21 before my time; has occasionally received it from FEMA,
22 also before my time. Either of those options would be

1 available to us to pursue in terms of disaster
2 assistance.

3 We tried to get in a supplemental bill in the
4 past three years and were unable to get in it. We
5 tried to get money from FEMA and were unable to get
6 money from FEMA. And I think that led to this past
7 year our concentrating on building a stronger
8 relationship with FEMA.

9 So my hope would be that in future disasters,
10 that our relationship would be strong enough to get
11 money through the supplemental bill for disaster. Now,
12 whether we would be specifically mentioned in the bill
13 or whether it would be a sub-grant from FEMA, I wanted
14 to get John Constance to weigh in on that prospect as
15 well.

16 MR. CONSTANCE: Is that in fact your question,
17 Tom?

18 MR. MEITES: It's a start. But, for example,
19 let's say we wanted to set up a disaster relief office
20 at LSC, and say the budget would be \$250,000 a year.
21 Given the way we obtain money, would we have to ask
22 Congress either to increase our overall appropriation

1 or put in a line item for that, or could we go to FEMA
2 like everybody else in the world does and say, give us
3 \$250,000?

4 If they can build those lousy trailers, buy
5 those lousy trailers, why can't they give us \$250,000?

6 MR. JEFFRESS: I think if you're talking about
7 \$250,000 on a continuing basis to fund a continuing
8 program in LSC, that's not going to come from FEMA.
9 That would have to come from an appropriation. The
10 FEMA money would be for responding to a particular
11 disaster.

12 MR. MEITES: Why?

13 ACTING CHAIRMAN BeVIER: Did you say "Why" or
14 did you say "Fine"?

15 MR. MEITES: I said why? Why can't we have a
16 ten-year contract with FEMA where they pay us \$250,000
17 a year?

18 MS. COHAN: From a legal standpoint, that
19 would really be a matter of whether FEMA had the
20 authority to give its money to us for an ongoing
21 project like that.

22 MR. MEITES: We could take it?

1 MS. COHAN: I mean, and certainly I don't
2 think anybody in this room can tell you what FEMA's
3 statutory authority is in this way. Certainly not
4 right now.

5 MR. MEITES: No. But as a matter of policy,
6 would we ask for that, or would that be something we
7 don't do because we get our money from Congress?

8 MR. JEFFRESS: Tom, I'm unaware of any
9 precedent of LSC asking for money to fund continuing
10 operations on a regular basis from any federal agency.
11 I'm not saying it's impossible or illegal, but I'm not
12 aware of it having been done.

13 MR. MEITES: Okay. Thank you very much.

14 ACTING CHAIRMAN BeVIER: Thank you. Is that
15 it for -- Veterans Affairs, you said?

16 MS. SINGLETON: Every year they give us money
17 to do their appeals. I think that's the kind of thing
18 Tom is thinking about, so we would have an office that
19 could -- whatever the disaster was, we would have
20 people there ready to respond.

21 ACTING CHAIRMAN BeVIER: Right. And don't we
22 have -- aren't we with DOJ with the Violence Against

1 Women Act? Or is that --

2 MR. JEFFRESS: LSC doesn't get any funding
3 from that.

4 ACTING CHAIRMAN BeVIER: We don't?

5 MR. JEFFRESS: The grantees do.

6 ACTING CHAIRMAN BeVIER: Oh, the grantees do.

7 All right. Sorry.

8 MS. SINGLETON: I thought we do.

9 MS. COHAN: Not us, no.

10 MS. SINGLETON: The Veterans --

11 MS. COHAN: That's statutory. We're not -- we
12 don't apply for a grant.

13 MR. JEFFRESS: We're a pass-through.

14 MS. COHAN: We're a pass-through, by statute.

15 ACTING CHAIRMAN BeVIER: All right.

16 MS. SINGLETON: Who ends up with the money?

17 MR. JEFFRESS: A consortium of veterans'
18 outfits. We have a very small amount of administrative
19 monies, \$10,000.

20 ACTING CHAIRMAN BeVIER: I think that's
21 changing the subject.

22 MS. SINGLETON: I'm sorry.

1 ACTING CHAIRMAN BeVIER: That's all right. I
2 appreciate that.

3 Tom, is that -- you think that's the best we
4 can do to answer your question?

5 MR. MEITES: Well, my questions are answered.
6 And if no one on the committee shares my either
7 interest or concerns, I'm finished. If there is
8 interest in pursuing either of those, which I haven't
9 heard, I must admit, I'd like to hear it.

10 ACTING CHAIRMAN BeVIER: Does anybody on the
11 committee have a comment, or would anybody on the
12 committee like to express an interest in pursuing this
13 concern that Mr. Meites has expressed?

14 MR. HALL: There is complete silence in the
15 room, Tom.

16 MR. MEITES: So much for those ideas.

17 (Laughter.)

18 ACTING CHAIRMAN BeVIER: Which, thank you,
19 David, for pointing out to us.

20 ACTING CHAIRMAN BeVIER: I don't think Tom
21 could hear it.

22 We're ready to move on to item No. 6 on the

1 agenda. I think this is consider and act on rulemaking
2 petition regarding financial eligibility requirements
3 in disaster areas. Tom, I think you had a suggestion
4 about how we should handle this.

5 MR. MEITES: Well, this is the petition from
6 the fellow in Hawaii. I think he wants to be on the
7 call. I don't know what time is in Hawaii, though.

8 ACTING CHAIRMAN BeVIER: Is he on the phone?

9 MR. GREENFIELD: Yes. Chuck Greenfield. I'm
10 here.

11 ACTING CHAIRMAN BeVIER: Well, in that case, I
12 think we'd better hear the petition.

13 MR. MEITES: Absolutely.

14 ACTING CHAIRMAN BeVIER: Thank you so much.
15 Please proceed.

16 MR. GREENFIELD: Thank you. Chuck Greenfield,
17 director of the Legal Aid Society of Hawaii. I'm
18 getting a bit of an echo on this, so I'll try as best I
19 can.

20 One of the comments I have is when I read the
21 staff memo just discussed about the relationship that
22 LSC has with other entities in disaster relief is that

1 that memo is probably the strongest reason the board
2 ought to consider for granting the petition for
3 rulemaking, allowing eligibility waivers for legal
4 services for disaster victims.

5 And I think that because of two main reasons.
6 One is that it demonstrates the significant -- excuse
7 me, the need for a significant LSC role in the
8 provision of disaster legal services. And as has been
9 demonstrated by the activity that LSC has had since
10 Hurricane Katrina and following disasters, they have
11 had a great role in the coordination, the sharing of
12 information, MOUs dealing with FEMA, dealing with Red
13 Cross and ABA Young Lawyers and others; and second,
14 that it demonstrates the need for significant
15 additional resources for the provision of disaster
16 relief, following up on Tom's comments a few moments
17 ago.

18 So that just by looking at the memo in
19 response to the chair's question about -- at the ops
20 first meeting, I think that shows that there is a
21 significant need for LSC having a significant role.

22 The problem is that no place in the

1 eligibility regulations for LSC do we talk about legal
2 services for disaster victims. We're silent on it.
3 Yet as LSC moves to take a more significant role, a
4 more national role, a leadership role in providing
5 disaster relief, our own regulations are silent. They
6 need to be updated.

7 One way to update it, at least in the
8 financial eligibility area, is to follow the
9 suggestions I have in this rulemaking petition, which
10 would allow local programs the flexibility to waive
11 financial income eligibility requirements as long as a
12 person or family was financially unable to afford a
13 lawyer. And the use of the term "financially unable to
14 afford a lawyer or counsel" comes from the LSC statute.

15 So I would urge this board -- this committee,
16 rather, of the board and the board later, if it gets
17 that far, to join me and sail the smooth statutory seas
18 of the LSC statute and the definition of when someone
19 qualifies for services, and not spend too much time in
20 rough regulatory rapids that I think we're caught in
21 when we don't talk about disaster relief at all in the
22 regulation.

1 I know in Vic's memo that there are a couple
2 of reasons given for -- policy reasons, excuse me --
3 given for LSC's management decision not to support this
4 petition. One was that there's not significant funding
5 available anyway. And the second was it's an expansion
6 of the eligible client pool.

7 And I think those are true, and I agree with
8 them. However, that's also true in many other
9 situations. For example, any time a local program or
10 even LSC says that the suggested priorities are four or
11 five different subject areas, and I as the program
12 director and our program and our board decide we're
13 going to handle housing cases in addition to family
14 cases, that also is an expansion of the eligible client
15 pool. And if we decide we're going to handle
16 employment cases, the same thing.

17 So we're constantly, as program directors and
18 as program boards, dealing with these kind of issues as
19 to how to stretch very limited resources over a much
20 greater group of clients and client communities that
21 need our services.

22 So while it's true that we have inadequate

1 resources, I don't think that fact alone should prevent
2 us from updating our regulations and looking at how we
3 humanely treat disaster victims.

4 I think one of the comments I tried to make
5 during the committee's meeting on August 1st was that
6 it's very difficult for us as a local program at a
7 disaster relief center to turn down individual families
8 who are in the fear, the stress, and have immediate
9 legal problems, who may otherwise be not eligible
10 financially for LSC funding but have a use for their
11 legal services.

12 And yet we know there's no other place they
13 can go. And yet we also know in many situations that
14 they are unable to afford legal assistance, which is
15 the term, I pointed out, that's from the statute
16 itself.

17 So what this would do, if the committee agrees
18 with the petition, is it allows, again, local programs
19 to have that flexibility. Does it force local programs
20 to do this? No. Does it say local programs have to
21 grant waivers in all situations where disaster victims
22 don't financially qualify for the 125 or 200 percent

1 limit? No. But it allows those local boards, those
2 local executive directors and staff, to make those
3 decisions on a case-by-case basis.

4 And I think, as I conclude, the important part
5 is that this type of issue, providing legal services to
6 disaster relief, is an issue that has really broad-
7 based support from the public. It has the potential
8 for great public support for LSC and local programs, so
9 that the public looks at us as providing critical
10 needed legal services for individuals and families that
11 are in crisis.

12 The crisis often is because they're being
13 evicted, or being discharged improperly from a nursing
14 home, or being denied welfare benefits, or being a
15 victim of domestic violence, or the crisis is that
16 they're a victim of a natural disaster.

17 That's what we do. We help people in crisis.
18 So this has a potential of broadening our support
19 throughout the country, and certainly, for my immediate
20 concern, within Hawaii with our local communities for
21 support.

22 So I would ask for your support for the

1 petition. Thank you.

2 ACTING CHAIRMAN BeVIER: Thank you very much.

3 Are there questions for -- Tom? For the person on the

4 phone, is what I meant. I thought his name --

5 MR. GREENFIELD: Chuck.

6 ACTING CHAIRMAN BeVIER: Chuck. forgive me.

7 I'm not getting names right. I'm Lillian, by the way.

8 MR. GREENFIELD: Hi, Lillian.

9 ACTING CHAIRMAN BeVIER: Board members?

10 Committee members? Questions for Chuck? Mattie would

11 you like to elaborate on the staff report that we

12 already have before us?

13 MS. COHAN: Sure. I think I'll just try to

14 focus on a couple of points. One is, obviously, for

15 anyone who is between 125 and 200 percent of the

16 federal poverty guidelines amounts, grantees already

17 have the regulatory authority to deem those persons

18 financially eligible.

19 There's a list of exceptions which grantees

20 can adopt into their policies, one of which is

21 basically a catchall "other factors related to the

22 ability to afford legal assistance." So certainly for

1 someone whose income is, say, 150 percent of the
2 federal poverty guidelines, the grantees would already
3 have that authority to find that person financially
4 eligible if the disaster -- if the results of the
5 disaster were such that they thought they were unable
6 therefore to afford an attorney.

7 The question is really what to do about
8 persons whose income is over 200 percent of the federal
9 poverty guidelines because under the regulatory scheme,
10 that's when you don't ask -- you don't check to see if
11 those factors apply, essentially. They're kind of out
12 the door.

13 And certainly, I think there are probably lots
14 of people whose income is in excess of 200 percent of
15 the federal poverty guidelines who, in the face of a
16 disaster, have something happen to them and they can't
17 afford a lawyer.

18 I think it's also probably true that there are
19 lots of people whose income is in excess of 200 percent
20 of the poverty guidelines, but because of other factors
21 going on in their lives, can't afford a lawyer when
22 they need them.

1 And it's a very unfortunate circumstance. And
2 there are policy reasons, you know, for and against
3 whether you want to think disaster victims specifically
4 need to be carved out as opposed to other people. I
5 mean, that's really a policy question.

6 Management has considered it, and as a policy
7 matter, you know, just feels like further expanding
8 that applicant pool in a time of very limited resources
9 just for the disaster victims, as sympathetic as they
10 are, is not necessarily warranted.

11 Also, in consideration of the fact that if
12 someone -- that person who's over 200 percent of the
13 federal poverty guidelines and can't afford a lawyer
14 comes in, if the grantee has non-LSC funds with what
15 they can serve them, nothing in LSC's financial
16 eligibility requirements prevents that from happening.

17 The financial guidelines, the financial
18 eligibility requirements, only go to LSC-funded and
19 supported legal assistance. So management's
20 determination was, looking at all of the pros and the
21 cons, the ability of grantees to serve persons over
22 200 percent with non-LSC funds, if they have them, and

1 the fact that persons who are between 125 percent and
2 200 percent, grantees already have the authority to
3 waive -- to deem those people financially eligible and
4 provide them with LSC-funded legal assistance, that
5 further changing the rules to allow for a waiver, to
6 allow for LSC-funded legal assistance for persons whose
7 income is over 200 percent of the federal poverty
8 guidelines, just was not warranted.

9 I don't think it's that management felt that
10 there's no merit to it. There are meritorious
11 arguments, I think, either way. It's just in the
12 fullness of considering them, management believes it's
13 more appropriate to deny the request for rulemaking and
14 not pursue a regulatory change.

15 ACTING CHAIRMAN BeVIER: Thank you, Mattie.

16 Public comment on this petition?

17 MR. SAUNDERS: Good afternoon. I'm Don
18 Saunders with the National Legal Aid and Defenders
19 Association, and I have just a few brief comments. And
20 if I might, Madam Chair, since there was no public
21 comment on the last item, make a very brief comment as
22 well.

1 We don't have a recommendation for you with
2 regard to the substance of this proposal. Linda and I
3 have talked to a number of people in the field, many of
4 whom have responded as your counsel did today. The
5 reason that we are concerned about it, however, is
6 folks like Chuck Greenfield, who you may not know was
7 in Northern Virginia and has a direct responsibility
8 and relationship with the 9/11 disaster at the
9 Pentagon.

10 We've talked with Mark Moreau, who directs
11 your program in New Orleans. The folks who have had to
12 experience it firsthand are the ones who say they need
13 that flexibility.

14 It's kind of a flip from the last thing. We
15 think maybe the train should leave the station on this.
16 And publishing it to see what comment and remarks you
17 get back would be a positive movement for you to take
18 as a committee simply because it is a difficult issue.

19 And the one thing I can share with you is
20 those folks who have been on the front line in these
21 disasters have said, we need this flexibility. And we
22 respect that even though we share a number of the

1 concerns that you heard.

2 If I might just for one moment return to the
3 deafening silence in response to the chairman's
4 comments about funding. As I had the chance to say to
5 the finance committee a few weeks ago, we very much
6 share Mr. Meites' concern that the Congress should fund
7 legal services.

8 The contract with the YLD simply provides
9 onsite referral capacities in the disaster centers for
10 young lawyers. They're very limited in what they can
11 pursue. They can't pursue anything against FEMA, which
12 is very often the issue at hand.

13 We do have a long history of funding -- a long
14 time ago of funding disaster relief directly to the
15 Corporation or through your grantee. And I know your
16 government affairs department has diligently been
17 pursuing that. But we would just urge you to continue
18 pursuing those efforts separate and apart from your
19 relationships with FEMA or the YLD. And thank you very
20 much.

21 ACTING CHAIRMAN BeVIER: Thank you. Other
22 public comment?

1 (No response.)

2 ACTING CHAIRMAN BeVIER: Is there a -- Mattie,
3 did you want to --

4 MS. COHAN: I just want to -- from a
5 procedural standpoint, just to make sure that --
6 Chuck's petition is to institute a rulemaking, you
7 know.

8 ACTING CHAIRMAN BeVIER: Right.

9 MS. COHAN: We're at the point of discussing
10 whether or not to start a rulemaking. There is nothing
11 to publish yet. So if the committee recommended to the
12 board and the board decided to initiate a rulemaking,
13 then the next procedural step would be that the staff
14 would present -- would draft a notice of proposed
15 rulemaking which would be presented presumably at the
16 January meeting. And it could then be approved for
17 comment at that time.

18 So it wouldn't be published -- there's nothing
19 yet to publish for comment. That couldn't happen
20 before January. You know, a notice wouldn't be
21 published for comment before some time in February,
22 given when the January meeting is.

1 That's just -- I just wanted to make sure that
2 that was clear procedurally.

3 ACTING CHAIRMAN BeVIER: That's helpful,
4 Mattie. Thank you very much.

5 I see that we have lost -- we're down one
6 committee member. David Hall has left the meeting.

7 MS. COHAN: Do you still have a quorum?

8 ACTING CHAIRMAN BeVIER: Yes, we do, if you
9 count the presence of Tom, I mean, because it's Bernice
10 and Jonann and Tom and me.

11 MR. MEITES: Lillian, it's Tom.

12 ACTING CHAIRMAN BeVIER: Yes?

13 M O T I O N

14 MR. MEITES: I would like to make such a
15 motion, that the staff be instructed to, what Mattie
16 said, prepare a draft rulemaking.

17 ACTING CHAIRMAN BeVIER: All right.

18 MR. MEITES: This is way beyond our expertise.
19 We don't -- the board and our committee doesn't really
20 have the information we would need to assess this
21 petition. Mattie suggests that in order to get that
22 information, we take it to the next step. And I think

1 this is a serious enough problem that we should.

2 MS. COHAN: I wasn't making a suggestion. I
3 was just clarifying a point of procedure.

4 MR. MEITES: I misspoke. Your suggestion --
5 it's the path you laid out for us.

6 ACTING CHAIRMAN BeVIER: We inferred, from
7 what you didn't suggest, that perhaps more information
8 would be helpful. Not that you suggested it, Mattie.

9 MS. COHAN: Yes. I'm not making a
10 substantive --

11 ACTING CHAIRMAN BeVIER: Is there a second to
12 the motion?

13 MS. COHAN: I am not making a substantive
14 suggestion. I am in fact promoting management's
15 position to deny the petition for rulemaking.

16 ACTING CHAIRMAN BeVIER: To not do what we're
17 about to do.

18 MS. COHAN: Yes.

19 ACTING CHAIRMAN BeVIER: Thank you. Is there
20 a second?

21 MS. CHILES: I'll second Mr. Meites' motion.

22 ACTING CHAIRMAN BeVIER: And there's a second

1 to the motion.

2 MS. SINGLETON: Could the chair restate it?

3 ACTING CHAIRMAN BeVIER: The motion is to
4 direct staff to prepare a notice of proposed rulemaking
5 with respect to the financial eligibility requirements
6 in disaster areas and whether to give grantees more
7 discretion with respect to people above 200 percent of
8 the poverty line than they currently have to dispense
9 legal aid in disaster situations to people like that.

10 I believe that I have fairly stated the
11 motion. I think I have.

12 MS. SINGLETON: Was there something that would
13 come up again in January

14 ACTING CHAIRMAN BeVIER: Yes, because we're
15 not going to -- the staff is going to prepare for us a
16 notice of proposed rulemaking that we will then decide
17 to vote on if we have the information that persuades us
18 that we should take that next step. That's what I
19 understood Mattie to be telling us.

20 MS. COHAN: Right. Procedurally, there's
21 nothing for you -- unlike with 1626 with the
22 alternative sanctions where there's a draft rule ready

1 to be published, there's nothing for us to yet send to
2 the Federal Register.

3 And legally, we have to come -- if we're going
4 to change the rule, we have to have a Federal Register
5 notice, and that Federal Register notice has to be
6 approved by the board. So the next time to do that
7 would be January.

8 MS. SINGLETON: All right. That clarified it.
9 It's not that you're directing staff to prepare and
10 publish the notice of proposed rulemaking. It's just
11 to prepare a draft notice and to bring that back to the
12 board for January, at which time you will consider
13 whether or not you want to recommend that it be
14 published.

15 ACTING CHAIRMAN BeVIER: That's exactly right.
16 That's what I meant to say. Thank you, Mattie, for
17 clarifying that.

18 We have a motion before us. All those in
19 favor say aye.

20 (A chorus of ayes.)

21 ACTING CHAIRMAN BeVIER: Opposed?

22 (No response.)

1 ACTING CHAIRMAN BeVIER: The motion carries.

2 Mattie, I take it that you are --

3 MS. COHAN: So charged.

4 ACTING CHAIRMAN BeVIER: -- so charged.

5 Tom, once again I need your expertise here. I

6 don't know how you do it every time with respect to the

7 next item on the agenda, which is --

8 MR. MEITES: According to my watch, you are

9 now two minutes past the time you were supposed to

10 adjourn.

11 ACTING CHAIRMAN BeVIER: Based on that fact, I

12 would suggest -- how am I doing, Tom? -- I would

13 suggest that we defer the discussion of the

14 responsibilities of the independent public accountants

15 until the January meeting.

16 MR. MEITES: Sounds like a good idea to me.

17 ACTING CHAIRMAN BeVIER: All right. I thought

18 it might.

19 (Laughter.)

20 ACTING CHAIRMAN BeVIER: Does anybody object?

21 (No response.)

22 ACTING CHAIRMAN BeVIER: All right. The next

1 thing on the agenda is to consider and act on other
2 business. Is there other business to come before the
3 committee?

4 MS. CHILES: I have a question.

5 ACTING CHAIRMAN BeVIER: Jonann has a
6 question. Yes, Jonann?

7 MS. CHILES: Okay. Going back to the subject
8 of receiverships, which I'm still interested in, I know
9 that a year or so ago the Office of Legal Counsel put
10 together a very nice, very thorough memorandum about
11 receiverships.

12 And I understand that receiverships are
13 extraordinary remedies, and I understand that it's very
14 difficult to go into a court to get one. It's
15 difficult and it's expensive. I also understand that
16 as it stands right now, we don't have a statutory right
17 or a contractual right to go in and get a receivership
18 type of tool in place.

19 But I do know that there was a time when I
20 worked for a state agency that received a lot of
21 federal money, and we took that federal money and we
22 distributed that money to grantees with whom we had

1 contracts. And the grantees were delivering various
2 services to the poor in Arkansas.

3 And we had the right that we, being the state,
4 the state agency, we had the right to go in under
5 certain circumstances, and for a certain period of time
6 act as receivers where a grantee failed to administer
7 the federal monies properly. And I don't know if it
8 was a statutory right or if it was a contractual right.
9 I think it was probably a contractual right.

10 But it just seems to me that there's got to be
11 some model out there that creates a receivership-type
12 tool or situation by virtue of contract. And I'd like
13 to see the issue revisited.

14 MS. SINGLETON: And just to add to that, in
15 New Mexico there is some kind of a program that the
16 state administers dealing with mental health, community
17 mental health agencies, providers. And they have that
18 same right.

19 If the agency is messing up -- and they do
20 frequently; you know, they give the contracts to their
21 buddies instead of doctors and, you know -- and they
22 have the right to go in and take over.

1 ACTING CHAIRMAN BeVIER: So those are good
2 comments. I think that the sense of the committee has
3 been widely and fairly reported to you with respect to
4 this question of what we need, perhaps, is more
5 flexibility, and here's another kind of suggestion or
6 set of suggestions that we hope that you will consider
7 and bring to us in January.

8 And we appreciate it. And just sort of
9 legally can we do a receivership but, you know, you're
10 good lawyers. You can figure out alternatives that we
11 might pursue that would be within our ken, within our
12 legal authority.

13 All right. Other public comment? Is there
14 other public comment?

15 (No response.)

16 ACTING CHAIRMAN BeVIER: Is there a motion to
17 adjourn the meeting?

18 M O T I O N

19 MS. CHILES: So moved.

20 ACTING CHAIRMAN BeVIER: Is there a second?

21 MS. PHILLIPS-JACKSON: Second.

22 ACTING CHAIRMAN BeVIER: All in favor?

1 (A chorus of ayes.)

2 ACTING CHAIRMAN BeVIER: Thank you.

3 (Whereupon, at 5:35 p.m., the Operations and
4 Regulations Committee meeting was adjourned.)

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